

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING**

**RUSSELL BENNETT and BARBARA
BENNETT,**

Plaintiffs,

v.

**VEBI VEHAPI and MS TRANSPORT,
LLC,**

Defendants.

ELECTRONICALLY FILED Jan 12 2021 U.S. DISTRICT COURT Northern District of WV
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5:21-CV-8 (Bailey)
Civil Action No. _____
(Ohio County Circuit Court
Civil Action No. 20-C-373)

DEFENDANTS' PETITION FOR REMOVAL

COME NOW the Defendants and Removing Parties, Vebi Vehapi and MS Transport, LLC, by counsel, the law firm of Bailey & Wyant, PLLC, Justin C. Taylor, and Thomas E. Buck, and hereby petitions for removal to this Honorable Court pursuant to 28 U.S.C. § 1332, *et seq.*, and respectfully presents the following grounds for removal:

I. NATURE OF ACTION

1. Plaintiffs, Russell and Barbara Bennett, filed the underlying four (4) count Amended Complaint on December 15, 2020. See Exhibit A. Under Count I, Plaintiffs allege that Defendant Vebi Vehapi was negligent in operating a truck/tractor motor vehicle owned by Defendant MS Transport, LLC that caused a side-swipe collision with Plaintiffs' Ford F250 pick-up truck. See Exhibit A, ¶ 12. In Count II, Plaintiffs allege that Defendant MS Transport, LLC negligently entrusted their truck to Defendant Vebi Vehapi based on Defendant MS Transport, LLC's actual or constructive notice and knowledge that Defendant Vebi Vehapi was unfit to operate said truck/tractor

motor vehicle with a reasonable safety for other motor vehicle operators upon the roadways of the State of West Virginia. *Id.*, ¶¶ 19-20. In Count III, Plaintiff Barbara Bennett alleges that she has lost the consortium of her husband, Plaintiff Russell Bennett caused by the conduct of Defendants in this matter. *Id.*, ¶ 26. Finally, in Count IV, Plaintiffs allege they have and continue to suffer property damage and other related losses, including but not limited to, loss of use, annoyance, inconvenience, aggravation, costs and expenses. *Id.*, ¶ 28.

2. As a result of these allegations, Plaintiff's filed a Complaint in the Circuit Court of Ohio County, West Virginia, Civil Action No. 20-C-246, against these Defendants.

II. DIVERSITY OF CITIZENSHIP

3. Plaintiffs admit in their Amended Complaint that they are residents of Ohio County, West Virginia. *Id.*, ¶¶ 1-2.
4. Plaintiffs admit in their Amended Complaint that Defendant Vebi Vehapi is a resident of St. Louis, Missouri. *Id.*, ¶ 3.
5. Plaintiffs admit in their Amended Complaint that Defendant MS Transport, LLC is organized under the laws of the State of Missouri with its principal place of business being 1091 Hickory Ridge Trail, Arnold, Missouri 63010. *Id.*, ¶¶ 4-5.
6. Accordingly, the parties are completely diverse for 28 U.S.C. § 1332(a)(1) purposes, which states that the district courts shall have original jurisdiction of all civil actions where the amount in controversy exceed the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.
7. The Petition for removal is timely. The Amended Complaint was filed on or about December 15, 2020. Defendant Vebi Vehapi was served on 12/24/00 and Defendant

MS Transport, LLC was served via the Missouri Secretary of State on 1/4/00. *See* Exhibit B. 28 U.S.C § 1446(b)(1) states that “the notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” This Petition for Removal was filed on January 12, 2021, which is less than 30 days after receipt of the original pleading by either Defendant.

III.AMOUNT IN CONTROVERSY

8. The Amended Complaint does not specify the amount of monetary damages that Plaintiffs are seeking. However, Plaintiffs are seeking a variety of compensatory damages, punitive damages, pre- and post-judgment interest and costs. These damages, if awarded, would undoubtedly be in excess of the statutory minimum of \$75,000.
9. Specifically, Plaintiffs are seeking an award of compensatory damages for injuries to Plaintiff Russell Bennett’s head, neck, back, shoulders, arms, extremities, body chemistry, psyche, muscles, tissues, fascia, and other internal and external bodily injuries. Exhibit A, ¶ 22. Some to all of these injuries are permanent and lasting in nature and will cause Plaintiff Russell Barrett future suffering. *Id.* Further, Plaintiff Russell Bennet has alleged he has incurred diverse and sundry expenses for medical care and treatment and will suffer future divers and sundry expenses for medical care and treatment; has suffered a diminution in his ability and capacity to care for

himself and enjoy a normal life; and anticipates sustaining a future loss of earning capacity. *Id.*, ¶ 23. The Amended Complaint further asserts that Plaintiff Barbara Bennett has been deprived of the consortium and services of her husband and both Plaintiffs have suffered loss of use, annoyance, inconvenience, aggravation, and costs and expenses with respect to their damaged property. *Id.*, ¶¶ 26, 28.

10. Plaintiffs also assert in their “Wherefore” paragraph of the Amended Complaint that they are seeking plus pre and postjudgment interest and costs and punitive damages.
11. It is clear that plaintiffs are asserting the damages they have allegedly sustained are serious, severe, and permanent.
12. Because there is complete diversity among the parties to this matter and because the amount in controversy undoubtedly exceeds 75,000.00, exclusive of interest and costs, Defendant is entitled to removal of this matter from state court to federal court pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1444.
13. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. § 1332 and the action may, therefore, be removed to this Court pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

IV. ADDITIONAL PROCEDURAL COMPLIANCE

14. Further, venue in this action is proper under 28 U.S. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state-court action was pending.
15. Pursuant to 28 U.S.C. § 1441(d), a Notice of Filing of Petition for Removal of Proceeding from State Court has been filed with the Clerk of the Circuit Court of Ohio County, West Virginia, and Plaintiffs’ counsel has been served with a copy of

same. *See* Exhibit C.

16. The only pleadings filed to date in this matter in state court are the Summonses and Amended Complaint. The docket sheet from the Circuit Court of Ohio County, West Virginia, with respect to this matter, is attached hereto as Exhibit D. As set in the Notice of Filing of Petition for Removal of Proceeding From State Court, Defendants have requested that the Clerk of the Circuit Court of Ohio County, West Virginia provide a complete copy of the file with regard to Civil Action No. 20-C-246 to the Clerk for the United States District Court for the Northern District of West Virginia at Clarksburg.
17. Finally, Defendants have paid the fee to the Clerk's office in the amount of \$400.00 for filing this Petition.

WHEREFORE, Defendants and Removing Parties, Vebi Vehapi and MS Transport, LLC, respectfully request that this Honorable Court **GRANT** the relief sought herein, and remove the above-captioned action from the Circuit Court of Ohio County, West Virginia, to this Court.

MS Transport, LLC and Vebi Vehapi,

By Counsel,

/s/ Justin C. Taylor
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Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**DEFENDANTS’
PETITION FOR REMOVAL**” was served upon the following parties through the Court’s
Electronic Case Filing (ECF) system on this day, January 12, 2021:

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